

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK  
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UNITED STATES OF AMERICA,

09 CR 323 (RPP)

- against -

**OPINION AND ORDER**

ANDREI VOUSTIANIOUK,

Defendant.

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**ROBERT P. PATTERSON, JR., U.S.D.J.**

On February 5, 2010, the Court issued an order directing the parties to notify the Court if, in light of Judge Weinstein's decision in *United States v. Peter Polouizzi*, 06-CR-22, 2010 WL 318265 (Jan. 20, 2010 E.D.N.Y.), they would seek trial by jury, rather than the planned bench trial on stipulated facts. At conference on February 18, 2010, counsel for the Defendant indicated that he would demand a jury trial if the Court would charge the jury on the subject of the mandatory minimum sentence that would apply if the jury were to convict. Tr. 2.

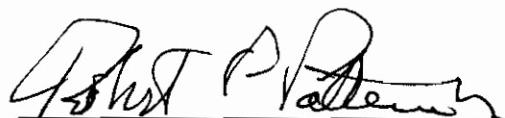
The Court of Appeals for the Second Circuit has not articulated the circumstances under which a district court may exercise its discretion to instruct a jury in a criminal case that a mandatory minimum sentence would apply to a guilty verdict. *United States v. Pabon-Cruz*, 391 F.3d 86 (2d Cir. 2004). In *United States v. Polouizzi*, 564 F.3d 142 (2d Cir. 2009), Second Circuit left open the question of when or whether a district court could exercise its discretion to instruct a jury as to the applicable mandatory minimum sentence. The Court's review of *Polouizzi* and the authority upon which it relies, *Shannon v. United States*, 512 U.S. 573 (1994), leads it to the opinion that, absent some

unusual event occurring during the conduct of trial or summations, such an instruction would be contrary to Second Circuit precedent and would constitute an “encouragement of jury nullification.” Accordingly, any determination pretrial to charge the jury about the mandatory minimum sentence applicable to the charges in the indictment would be without grounds under Second Circuit precedent and impermissible under the authority of *Shannon v. United States*.

Accordingly the Court declines to agree to give such an instruction the jury, and the parties shall proceed to bench trial as previously scheduled.

IT IS SO ORDERED.

Dated: New York, New York  
February 23, 2010



Robert P. Patterson, Jr.

U.S.D.J.

Copies of this order were faxed to:

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Chambers of  
Robert P. Patterson, Jr.  
District Judge

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**DATE: February 22, 2010**

**Case Name: USA v. Andrei Voustianlouk  
Index No. 09 Cr. 323 (RPP)**

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**FROM: JUDGE PATTERSON'S CHAMBERS**

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If there are any questions, please call 212-805-0238.**

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